

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:

HON. JAMES D. GREGG

DIETER NUEBEL and PATTY NUEBEL,

Case No. GK08-02462

Debtors.

Chapter 7

SCOTT A. CHERNICH, Chapter 7 Trustee

Adv. Proc. No. 08-80487-jdg

Plaintiff,

v

ASHLEY MILLER,

Defendant.

Scott A. Chernich (P48893)
FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for Plaintiff
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**MOTION TO APPROVE SETTLEMENT AGREEMENT
AND MUTUAL RELEASE WITH DEFENDANT**

Plaintiff, Chapter 7 Trustee, Scott A. Chernich (the "Trustee"), by his attorneys, Foster, Swift, Collins & Smith, P.C., respectfully moves the Court, pursuant to Bankruptcy

Rules 2002(a)(3) and 9019, to enter an order authorizing the Trustee to enter into the Settlement Agreement and Mutual Release with Defendant Ashley Miller (the "Defendant") and, for his Motion, states as follows:

1. Dieter Nuebel and Patty Nuebel ("Debtors") filed for relief under Chapter 7 of the Bankruptcy Code on March 24, 2008.
2. On November 20, 2008, the Trustee filed a complaint against Defendant to avoid a fraudulent transfer of a warranty deed to the Defendant by her aunt, one of the Debtors, Patty Nuebel, transferring her undivided one-half interest in real estate located in Tuscarawas County, Ohio, on November 20, 2007.
3. The Defendant filed an Answer to the Trustee's Complaint.
4. The parties have arrived at an understanding with reference to a settlement of their differences in this case wherein the Defendant will pay the sum of \$1,000.00 to the bankruptcy estate in complete and final settlement of all claims against Defendant.
5. Payment will be made to the Trustee upon the entry of the order approving settlement.
6. In the event the Defendant defaults on the stipulated payment and becomes more than 30 days delinquent on the payment, the court will retain jurisdiction and a Consent Judgment will be entered in favor of the Trustee against the Defendant in the amount of \$1,000.00, plus costs, and attorneys fees, with credit given for any payment made pursuant to this agreement.
7. An Order of Dismissal with prejudice and without costs will be filed

after the Trustee receives payment in full.

8. The Trustee has considered the expense and inconvenience of litigation, as well as the paramount interest of creditors, and he believes that this settlement is fair and reasonable and is in the best interest of the estate, and should be approved by this Court.

9. The claims bar has expired, and after paying administrative costs the Trustee believes that there will be a distribution to allowed claims.

10. It is the Trustee's opinion that the settlement of \$1,000.00 is a fair settlement and in the best interests of the Debtors' Chapter 7 bankruptcy estate. It is the Trustee's opinion that the cost of litigating this Adversary Proceeding will reduce the amount of funds brought into the estate to pay creditors, and there is the possibility that the estate would not prevail at a hearing and creditors would not receive any distribution.

11. If settlement is not approved, the parties will likely be forced to litigate this matter in court, which could possibly be the subject of an appeal, thereby further reducing any benefit to the creditors of the estate.

12. As stated in the Settlement Agreement, both parties have retained and sought the advice of licensed and competent counsel with considerable expertise in the bankruptcy area, and/or have voluntarily declined legal counsel.

13. The settlement between the parties is a product of arms length bargaining.

14. A copy of the Settlement Agreement and Mutual Release is attached hereto as Exhibit A.

15. A copy of the Order Approving Settlement Agreement and Mutual

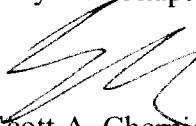
Release is attached hereto as Exhibit B.

WHEREFORE, Plaintiff, Chapter 7 Trustee Scott A. Chernich, respectfully requests this Court:

- A. Enter an order approving the Motion to Approve Settlement Agreement and Mutual Release; and
- B. For such other and further relief as the Court deems just and equitable.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for Chapter 7 Trustee



Dated: May 20, 2009

By: /s/ Scott A. Chernich
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